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April 9, 2009

VIA HAND DELIVERY
The Honorable Charles L. A. Terreni
Chief Clerk and Administrator
The Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

Re:
- Happy Rabbit, a South Carolina Limited Partnership on behalf of Windridge Townhomes, (hereinafter, "Happy Rabbit") v. Alpine Utilities, Inc., (hereinafter, "Alpine"); Docket No. 2008-360-S
- **Complainant's Further Response in Opposition to Respondent's Motion for Summary Judgment**

Dear Mr. Terreni:

Enclosed for finding is an original and one copy of Happy Rabbit's Further Response to Respondent's Motion for Summary Judgment.

Please advise if you have any questions or concerns.

Respectfully submitted,

Richard L. Whitt
Jefferson D. Griffith, III
Counsel for Complainants

RLW/jjy
cc: Certificate of Service

ORIGINAL

BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2008-360-S

IN RE: Happy Rabbit, LP on Behalf of, Windridge Townhomes, Complainant, v. Alpine Utilities, Inc., Respondent.	**COMPLAINANT'S FURTHER RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

Happy Rabbit, a South Carolina Limited Partnership, on behalf of Windridge Townhomes, (hereinafter, "Happy Rabbit") further responds to Alpine Utilities, Inc.'s, (hereinafter, "Alpine") Motion for Summary Judgment:

INTRODUCTION

Happy Rabbit re-alleges its prior Response, with Affidavit, e-filed with this Commission on April 3, 2009.

REVIEW OF ALPINE'S MOTION FOR SUMMARY JUDGMENT

I. Alpine's Allegations Concerning Contract for Service

Happy Rabbit repeats that it is of no import in this Docket that Happy Rabbit is a customer of Alpine. **No one disputes that Happy Rabbit is a customer of Alpine**. As Happy Rabbit has been forced to state *ad nauseam,* and repeats again today, the fact that Happy Rabbit is presently a customer of Alpine is meaningless in the context of Happy Rabbit's Complaint. Happy Rabbit was "forced" to become and remain, a customer of Alpine and as Happy Rabbit has maintained since October 6, 2003, Alpine's requirement that Happy Rabbit be Alpine's customer for Windridge's tenants is a clear violation of § 27-33-50. Alpine's arguments continually ignores the fact that it required Happy

Rabbit to be a customer of Alpine and states the obvious that Happy Rabbit is a customer of Alpine. That fact means nothing in the context of this Complaint.

I-(A). Alpine Improperly Claims that Happy Rabbit is a Sucessor in Interest to the Original Developer of the Property at Windridge

Happy Rabbit **is not** a successor or assign of Carolyn L. Cook. Carolyn L. Cook **is not** a successor or assign of Windridge Limited Partnership. Windridge Limited Partnership **is not** a successor or assign of the original developer of the property at Windridge. (See Affidavit of George W. DuRant attached hereto.) There is no chain of successor in interests from the original developer to Happy Rabbit, in order to make Alpine's convoluted view of § 27-33-50 applicable. Windridge Limited Partnership (no jural relationship to Carolyn L. Cook or Happy Rabbit – See Affidavit of George W. DuRant attached hereto.) Carolyn L. Cook and Happy Rabbit are simply successors in ownership of the Windridge property, they are not successors or assigns of each other.

(Alpine's continuing argument as to the law and the application to the facts of the law is overwhelming support for the necessity of an expert witness in this case. Happy Rabbit presently has a request pending to add Dean Philip Lacy from the University of South Carolina Law as an expert witness in this case.)

Alpine provides a citation to one case, West v. Newberry Elec. Co-op., 357, S.C. 537, 593 S.E.2d 500 (Ct. App. 2004). This case does not support Alpine's erroneous argument that the contract between the original developer and Alpine was somehow binding on Carolyn L. Cook and Happy Rabbit. (See Affidavit of George W. DuRant attached hereto.)

The West case provides no support for Alpine's unsupported claim, and like Alpine's view of the plain English meaning of § 27-33-50, Alpine's view is backwards from the facts of the case. In the West case, Newberry Electric Co-Op, (hereinafter, "NEC") was a party to the original contract between NEC and West's predecessor's in ownership of the property. When West bought the property he was unaware of the contract and only after NEC failed to do what West asked it to do, did West discover the

unrecorded easement. West then sought to enforce the contract against an original signatory to the Contract saying that the Contract ran with the land.

In the instant case, unlike the West case, the original signatory to the Contract is trying to enforce a contract against parties, with no jural relationship, and argue that somehow sewer service is a covenant that runs with the land. Also, the original signatory to the Contract in the instant case, unlike the West case, tries to impose the obligations of the Contract on an innocent, non-party to the contract, who was not on notice to the existence of the Contract. Happy Rabbit is not asking that the easement, which might actually be closer to a covenant, be moved but merely that service be changed to the appropriate persons, in compliance with the change of law effective July 1, 2002 and to recover monies paid to Alpine because of Alpine's violation of § 27-33-50. Finally, there was no change in the law affecting the West case, as is true in the instant case.

II. Alpine Misapplies the Doctrine of *In Pari Materia*

As for Alpine's *in pari materia* argument, it is well settled that statues dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result, Joiner v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000).

In the two Complaints before the Commission, the following statues are applicable and dealing with the same subject matter: (i) **§ 58-3-140** (rates, service, and practices of all public utilities), (ii) **§ 58-5-210** (rates, service, and practices of all public utilities), (iii) **§ 58-5-290** (rates, service, and practices of all public utilities), (iv) **§ 58-5-300** (rates, services, and practices of all public utilities), and (v) **§ 27-33-50** (*de facto*, rates, services, and practices of all public utilities), and are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result, Joiner v. Rivas, *supra*. Furthermore, § 58-5-290 additionally is *in pari materia* with § 27-33-50 in that § 58-5-290 specifically gives this Commission jurisdiction where improper rates **are charged in violation of any provision of law**, such as § 27-33-50.

As for Alpine's attempt to read § 27-33-50, in pari materia with R. 103-533.O is unavailing and a misapplication of the Doctrine, because one is a statute, one is a

regulation, they do not deal with the same subject matter, and § 27-33-50 is not ambiguous.

III. Alpine Cannot Support an Argument for Unreasonable Delay

Happy Rabbit re-alleges its argument from its Return to Motion for Summary Judgment. Beyond that, Alpine's latest filing offers nothing substantive to support its argument.

IV. Alpine Willfully Overcharged Happy Rabbit and Carolyn L. Cook and this Commission has Jurisdiction to Hear Both Complaints

Alpine next makes the argument that because the charges to Happy Rabbit were made pursuant to an approved tariff, that fact overrides their violation of a state statute, § 27-33-50 S.C. Code Ann. (1976, as amended). Alpine's reliance on an argument that Alpine's willful overcharge was sanctioned, by the fact that the willful overcharges were made pursuant to a Commission approved schedule is inapposite.

Whenever the Commission shall find, after hearing, that the **rates...charges... however or whensoever they shall have theretofore been fixed or established, demanded,...charged or collected by any public utility for any service**,...that the rules,...affecting such rates...charges...are...or in anywise in violation of any provision of law, the Commission shall,...determine the just and reasonable... charges...or practices to be thereafter observed and enforced and [this Commission] **shall fix them by Order as herein provided** (emphasis supplied) **§ 58-5-290** S.C. Code Ann. (1976, as amended).

Therefore, in recognition of § 58-5-290, the fact that Alpine willfully overcharged Happy Rabbit pursuant to a Commission approved schedule does not absolve Alpine of the willful overcharge in light of § 27-33-50 S.C. Code Ann. (1976, as amended).

V. Alpine Erroneously Claims that Happy Rabbit's Circuit Court Damages are Identical to the Damages Sought in this Proceeding

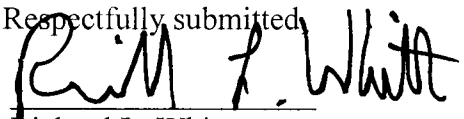
Happy Rabbit's Request for Relief in Circuit Court, *inter alia*, requests treble damages, punitive damages and attorney's fees. No such recovery is sought in this proceeding.

Therefore, Alpine's assertion to this tribunal is simply false.

CONCLUSION

The case *sub judice* does not lend itself to Summary Judgment for the Respondent. A review of Alpine's Motion for Summary Judgment and its filings in support thereof, reveal that there is not adequate support for this Commission granting a Motion for Summary Judgment for the Respondent. Accordingly, based on the foregoing, the Pleadings of this case and the Affidavit filed in this case and attached hereto, Alpine's Motion for Summary Judgment must be denied.

Respectfully submitted,



Richard L. Whitt
Jefferson D. Griffith, III

Counsel of Record for
Happy Rabbit, a South Carolina
Limited Partnership on behalf of Windridge
Townhomes

Columbia, South Carolina

RLW/jjy
Enclosure

BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2008-360-S

IN RE:

Happy Rabbit, LP on Behalf of,
Windridge Townhomes,

Complainant,

v.

Alpine Utilities, Inc.,

Respondent

CERTIFICATE OF SERVICE

I, Jessica Yun, an employee of Austin & Rogers, P.A., certify that I caused to be delivered a copy of Happy Rabbit's Further Response in Opposition to Motion for Summary Judgment in the above referenced matter as indicated below, via Hand Delivery as addressed below, with proper postage affixed thereto, or e-mail on April 9, 2009.

Attorney Benjamin P. Mustian
930 Richland Street
Columbia S.C., 29201
Via Hand-Delivery

Nanette S. Edwards, Esquire
Via e-mail

Austin & Rogers, P.A.

Jessica Yun

Columbia, South Carolina
April 9, 2009